Nos. 382 and 385

IN THE

SUPREME COURT

OF THE

United States

October Term, 1957

THE FIRST UNITARIAN CHURCH OF LOS ANGELES, a corporation,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, H. L. BYRAM, County of Los Angeles Tax Collector, and JOHN R. QUINN, County of Los Angeles Assessor,
Respondents.

VALLEY UNITARIAN - UNIVERSALIST CHURCH, INC.,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA; CITY OF LOS ANGELES, CALIFORNIA; H. L. BYRAM, County Tax Collector,
Respondents.

RESPONDENTS' CONSOLIDATED BRIEF

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RESPONDENTS' CONSOLIDATED BRIEF

STATEMENT OF THE CASE

Petitioners' "Statement of the Case" requires notice and a cautionary word. In one recital it is either argumentative or by purported factual statement assumes the very point in issue. It says:

> "Under Article XIII Section 1½ of the California Constitution, by reason of said sole and exclusive use for religious worship, said property is entitled to tax exemption." (Pet'r. Consol. Op. Br. p. 4.)

Whether "said property" is indeed "entitled to tax exemption" is the very issue in the case. The issue herein and the doubt as to petitioners' right to tax exemption arise by reason of the further and later provision of the same Constitution which withholds exemption otherwise authorized if the property owner, contrary to the public interest, advocates violent overthrow of government or war-time support of an enemy. The exemption which the People by adopting Constitution Article XIII, Section 1½ had before granted as to "property used solely and exclusively for religious worship" they later modified by amending their Constitution and by adopting the further provision, Article XX, Section 19, whereby they limited, and to a degree withdrew, the earlier grant of exemption. The People thereby declared that thereafter they withheld exemption from those who advocate the violent overthrow of government or wartime support of an enemy. This limitation applies not only to churches but to all who claim tax exemption.

Further, petitioners' "Statement of the Case" then continues:

> "Respondents refuse to allow petitioners the church exemption not because the churches did,

> or because respondents claim they did, advocate either of the doctrines proscribed by Article XX, Section 19 of the California Constitution." (Pet'r. Consol. Op. Br. pp. 4-5).

Again, in this, petitioners make representation which is not factual. The disqualification is not, as petitioners state it, because they "advocate the (doctrine of) the overthrow of the Government of the United States . . . or advocate the (doctrine of) the support of a foreign government against the United States . . ." (parentheses indicate petitioners' insertions). Petitioners' insertion twice of the phrase "the doctrine of" constitutes a material change in the provision. It is permissible for petitioners to *argue* that the question herein and the provision of the California Constitution and statute concern advocacy of *doctrine,* but it is not permissible for petitioners to represent it as fact, in the "Statement of the Case". One of the issues herein to be argued and determined is whether the question at issue and the provisions of the California Constitution and statute are not precisely as they declare, advocacy of violent overthrow and advocacy of wartime enemy support.

SUMMARY OF THE ARGUMENT

The main theme and course of argument throughout this brief will be that the California laws withdrawing property tax exemption from advocates of certain types of action were not enacted to punish those who advocate such action. Rather the exemption was withdrawn because such advocacy is *inconsistent* with the legitimate purposes and ends sought to be accomplished by the exemption. In these cases the prime issue, we think, is whether or not the state interests sought to be forwarded by the church exemption are of sufficient weight to justify the slight restriction on speech and the possible slight restriction on religious practice of those who advocate violent unlawful action and war-time support of enemies of the United States.

Point I of this brief will point out that it is a state tax law which is being challenged here; that the power to tax is a sovereign power of the state; that a church, or any other exemption claimant, has no inherent right to exemption, and that in the exercise of the power to tax, taxation is the rule and exemption the exception. The basis for and rationale of exemptions is that the state has found that some benefit to the state from the recipient of the exemption compensates for the diminution in tax revenue. The state sets the standard and if the property owner does not meet and show that he meets the standard, he is not entitled to the exemption.

Point II will consider the determination by the People of Califorinia that property owners advocating violent overthrow of government or war-time support of a foreign government against the United States do not benefit the state and should not receive tax exemption. Such determination is reasonable and Section 32 of the California Revenue and Taxation Code is reasonable implementation thereof.

Point III will defend the declaration, by Section 32 provided for and required, against the charge of vagueness. Petitioners do not assert and have not shown in what way they have been misled. "Advocate" had become a word of art; to advocate means more than to merely believe. This Court has upheld many statutes and oaths similar to the subject declaration against the charge of constitutional vagueness. When either constitutional or unconstitutional interpretation is possible, the Court will assume that the interpretation made is the constitutional application, unless actual unconstitutional application is shown.

Point IV will show that California does not deny the equal protection of the laws by excepting the householder's exemption of $100 from the requirement of a declaration from the property owner seeking such exemption. The state can make reasonable classifications for tax purposes. As a matter of history, California has traditionally excused the householder from certain of the requirements otherwise laid for property tax exemption.

Point V will show that there is no violation of First and Fourteenth Amendment rights such as to render unconstitutional the declaration here required. Exemption is granted the church on non-religious grounds, and similarly, can be refused on non-religious grounds. Requiring a declaration from petitioners does not infringe upon their religious rights—they have no objection to but have made other sworn declarations in their tax return and of record herein. The declaration here required does not concern religious opinion or belief nor violate the freedom of speech. The state's contrary interest herein is sufficient to outweigh a possible minor restriction of absolute freedom of speech.

Finally, Point VI will show that the provisions of the California statute is not precluded by Federal occupation of the field. This is a state tax statute and in no way conflicts with the administration of the Smith Act.

ARGUMENT

I.

Article XX, Section 19 of the California Constitution and Section 32 of the California Revenue and Taxation Code Are a Valid Exercise of the State's Sovereign Power to Tax.

A. Church Property Has No Inherent Right to Tax Exemption.

Article XX, Section 19 of the California Constitution and Section 32 of the California Revenue and Taxation Code prescribe conditions on which California grants exemption from taxation. Article XX declared the State's intention to administer tax policy for the general welfare of the citizens of California by refusing to bestow by tax exemption a public bounty to those who advocate the violent overthrow of the govermnent or war-time aid to the enemy. The California Legislature implemented this provision by statute withholding the subsidy from organizations and persons who refuse to declare that they do not so advocate. By Constitution and statute California has expressed its sovereign interest to encourage and foster moral standards and conduct.

The power to tax is an inherent and indispensible attribute of state sovereignty. Co-extensive and co-equal with the basic power to tax is the power to exempt from taxation. The administration of its tax policy

is an area peculiarly within the jurisdiction of the states. A state has the power to tax church property. Such property has no Federal immunity from nondiscriminatory taxation *(Watchtower Bible & Tract Society v. Los Angeles County,* (1947) 20 Cal. 2d 426, 182 P. 2d 178, cert. denied (1947) 332 U.S. 811). Petitioners' claim to tax exemption can be based only on the Constitution of California and the statutes passed pursuant thereto, provisions with which they have refused to comply.

Tax exemption granted by California Constitution Article XIII, Section 1½ is validly qualified by Article XX, Section 19. The exemption which the People in 1900 granted to "property used solely and exclusively for religious worship," they modified and limited, and to a degree withdrew in 1952, by adopting Article XX, Section 19. Thereby the People validly declared that they withhold exemption from those who advocate the unlawful violent overthrow of government or war-time support of an enemy. This limitation applies not only to churches but to all others claiming tax exemption. As the California Supreme Court stated herein, "a church organization is in no different position initially than any other owner of property with reference to its obligations to assist in the support of government by the payment of taxes. Church organizations, however, throughout the history of the state, have been made special beneficiaries by way of exemptions" (Tr. of Record p. 38).

Exemption from taxation is a gratuity or favor. It is not a right; and omission by the law to grant, or enactment to withhold exemption does not *ipso facto* deprive of legal or constitutional right. Nor do the Federal requirements of due process or equal protection impose any rigid rule of equality of taxation. Instead, legislation may make distinctions having a rational basis and purpose. This is recognized and declared in the decisions of this Court. As stated in *Ohio Oil Co. v. Conway*, 281 U.S. 146, 74 L.Ed. 775:

> "The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. . . . In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure. . . ." (p. 782)

Petitioners charge that the provisions of California Constitution and statute violate the equal protection clause of the Fourteenth Amendment (Pet'r Consol. Op. Br. pp. 3-4, 38). They say that "the classification

. . . is not reasonable, it is arbitrary and does not rest upon any ground of difference having a fair and substantial relation to the object of the legislation. Both Article XX and Section 32 deny equal protection" (ib p. 41). Specifically, they allege that the classification ". . . depends not upon the nature of the property, its value, extent, location, use, nor any other factor relating to the property but rather upon unrelated non-advocacy of the owners" (ib. p. 40). Their objection to the classification that it "does not rest upon any ground of difference having a fair and substantial relation to the object of the legislation" is merely stated without accompanying analysis. As to the objection that the classification is based on the character or behavior of the owner rather than on the nature of the property itself, the clear answer is that such constitutes one of the traditional bases of classification for tax exemption. Exemption may be granted on the basis of ownership or on the basis of the nature and use of the property. The former, no less than the latter, constitutes valid basis for classification. This Court has said:

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it . . .
>
> "This restriction upon the judicial function, in passing on the constitutionality of statutes, is not

> artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution . . .". (*Car-Michael v. So. Coal & Coke Co.*, 301 U.S. 509, 81 L.Ed. 1245, p. 1253)

The Fourteenth Amendment is not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways (*Bell's Gap R. R. Co. v. Commonwealth of Pa.*, 134 U.S. 232, 33 L.Ed. 892)

In *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 72 L.Ed. 770, the Court said:

> "The equal protection clause, like the due process of law clause, is not susceptible of exact delimitation. . . It does not . . . forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . . ." (p. 773)*

**Rogers v. City of Hennepin*, 240 U.S. 148, 60 L.Ed. 594, involved a Minnesota statute taxing membership in the Chamber of Commerce while exempting other organizations such as the Associated Press, and Lodges, Fraternal Orders and Churches. The Court held this was not a denial of equal protection, saying that the exempt organizations present manifest distinctions which the state is entitled to observe in its taxing policy.

As the California court declared herein as to Article XX Section 19:

> "By its enactment the People of the state declared the public policy of withholding from the owners of property in this state who engaged in prohibited activities the benefits of tax exemption." (Tr. of Record p. 41)

In another case the California Appellate Court said:

> "The right to make exemptions is involved in the right to select the subjects of taxation and apportion the public burdens among them and

By virtue of its sovereignty, the state has the inherent right to determine what taxes shall be levied, what exemptions shall be granted, and what administrative provisions must be complied with. This right is subject only to the limitation that the policy be reasonable and be consonant with the public welfare.

B. A Tax Exemption Is Justified Only on the Ground That the Exempted Property Performs a Public Service or Affords a Public Benefit.

In granting exemptions to religious organizations the theory is that the exempt property performs functions which, if performed by a public agency, would entail expense to the taxpayers equal to or in excess of the loss of revenue resulting from the exemption.

Tax exemption to religious organizations is justified on the ground that the teachings and influence of religion make better citizens, and that the church and its activities render benefits to the state and to the

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must, consequently, be understood to exist in the lawmaking power whenever it has not in terms been taken away. (1 Cooley on Taxation, p. 343.)" (*San Francisco v. McGovern*, 28 Cal. App. 491, 512.)

An exemption granted by the People may by the People be withdrawn. *McCoppin v. McCartney*, (1882) 60 Cal. 367, involved a constitutional exemption of property terminated by change of the Constitution. The California Constitution of 1849 exempted or excused from taxation mortgages on real property. Then the new 1879 Constitution taxed the mortgaged property as between mortgagor and mortgagee, declaring the mortgage to be an interest in the property and taxable to the mortgagee. The case involved the question of the taxability in 1880 and after the adoption of the 1879 Constitution of a mortgage executed within the period of the Constitution of 1849 and in the period of mortgage exemption. The Court held that the earlier exemption had been terminated and validly withdrawn, saying:

> ". . . a mortgagee, prior to the adoption of the new Constitution, did not have a vested right of exemption from taxation which extended beyond the life of the former Constitution. . . . The plain intent of the new Constitution is to subject to taxation classes of property previously exempt. . . ." (p. 371)

general public, whereby the state gets back in the benefits from personal conduct and private and public morality what it loses in money. People perform public services they otherwise would not perform and refrain from public misconducts they otherwise would not refrain from. The benefit is expected to be found in the church's influence and work and the result thereof in maintaining and raising the standards of civic and private virtue and the ideals and conduct in public and private life. If, however, the influence of the exemption recipient is inimical to such results and it fails to forward such purpose, the justification for the exemption is gone, and the exemption should be and may validly be withheld or withdrawn. Advocacy of the violent, lawless overthrow of one's government or of war support to her enemy are contrary to the moral sense of our people and are to the prejudice and injury of the state and the general welfare. Such acts are akin to treason and certainly outside the realm of good moral conduct. The church that so advocates no longer benefits the state. Withdrawal of the gratuity and the benefit of exemption is calculated to encourage moral behavior and to discourage the specified advocacies.

Seventy-five years ago the Federal District Court of California made an incisive statement of the justification of church tax exemption:

> "The public benefit is the equivalent to the state for the tax which would otherwise be exacted. If buildings, used as churches for public worship,

> are also sometimes exempted, it must be because, apart from religious considerations, churches are regarded as institutions established to inculcate principles of sound morality, leading citizens to a more ready obedience of the laws. Whatever the exemption, it can only be sustained for the public service or benefit received." (*Santa Clara v. Southern Pacific R. R.*, (1883) 18 Fed. 385, 400.)

This holding was affirmed by this Court in 1886 (118 U.S. 394).

C. The Burden Is on the Property Owner Asserting a Right to Tax Exemption to Qualify and Show His Right Thereto.

The activities of or incident to the secular life of the community are the direct concern of the government and may be such, even though carried on by a religious organization (*Prince v. Massachusetts*, (1944) 321 U.S. 158).

The Supreme Court of California has summarized the secular activities of the church and the state's interest therein as follows:

> "Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such free-

> dom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty." (*Gospel Army v. Los Angeles,* (1945) 27 Cal. 2d 232, 245, 163 P. 2d 704, 712, appeal dismissed (1947) 331 U.S. 543).

Inasmuch as it is secular activities which afford the justification for the church's tax exemption, the state properly administers the exemption within its general administrative powers, and properly puts the burden on the church to qualify for the exemption. Carl Zollman, one-time law professor at Marquette University and a thoughtful writer on the relationship of church and state, says:

> "Since taxation is the normal condition, while exemption is an abnormality, the leaning of the judicial mind naturally is toward taxation and away from exemption. It follows that the exemption claimant has the burden of proof. He must point out the statute or constitutional provision under which he claims his privilege. He must bring his case either literally or by clear intendment within the terms of such statute or constitutional provision." ("Tax Exemptions of American Church Property" 14 Mich. L. Rev. 646, 653.)

The state has the right and power, and, indeed, the duty, to take all reasonable steps to assure that the

activities of a church claiming exemption are of value to the public. A church or any other property owner seeking exemption must comply with any reasonable regulation enacted to assist the state in determining the claimant's right to the exemption and whether the particular grant is in fact in the public interest.

Withdrawal of tax exemption from such advocates is not a penalty, and the provision therefor does not impose a penalty. The exemption is withdrawn because the purpose in granting exemption is no longer accomplished. The farmer fertilizes his crops; he does not fertilize the weeds. He does not therefore "penalize" the weeds. The crops forward his farm purposes; the weeds do not.

II.

Article XX, Section 19 of the California Constitution Constitutes Valid Provision of Conditions Under Which Tax Exemptions Will Be Granted or Withheld, and Section 32 of the Revenue and Taxation Code Is a Reasonable Means of Ascertaining Whether the Conditions Are Met and Whether an Applicant is Eligible.

Since the exemption to religious organizations stands only upon the ground that such organizations further particular aspects of the public interest, the exemption may be withdrawn when such aspects of the public interest are no longer served. By the adoption of Article XX, Section 19 the People of California have determined that the public interest fostered by church exemption is not being served by organizations advocating the violent overthrow of the government or wartime support of its enemies. It is difficult to conceive of activities more antagonistic to the basic interests of our society. The People cannot be said to have acted unreasonably in deciding no longer to subsidize by tax exemption activities inconsistent with the purposes and ends intended by such exemption.

Civil Liberties Union charges that the oath requirement has no relation to or bearing on the reason for granting church exemption. The brief says "The oath requirement bears no relation to the traditional universal reasons for granting tax exemption to church

properties" (p. 14). On the contrary, the statute is indeed an implementing statute and its machinery is direct to accomplish the constitutional purpose. The question whether the statute is a legitimate interpretation of the constitutional provision and not in conflict therewith is not for this Court. The State Supreme Court is the final arbiter on the question of any conflict between a state statute and the state Constitution (*Michigan Central R. R. v. Powers*, (1906) 201 U.S. 245).

Furthermore, of course, any attack on the reasonableness of the statute must meet and overcome the presumption favoring the validity of legislative enactments (*Graves v. Minnesota*, (1926) 272 U.S. 425). In *American Communications Assn., CIO v. Douds*, (1950) 339 U.S. 382, the Court said:

> "But insofar as the problem is one of drawing inferences concerning the need for regulation of particular forms of conduct from conflicting evidence, this Court is in no position to substitute its judgment as to the necessity or desirability of the statute for that of Congress." (p. 400).

And the Court continued:

> "In *Bridges v. California, supra*, we said that even restrictions on particular kinds of utterances, if enacted by a legislature after appraisal of the need, come to this Court 'encased in the armor wrought by prior legislative deliberations.' 314 U.S. at 261." (p. 401).

Even absent this presumption it would appear clearly reasonable for the Legislature to determine what organizations qualify for the exemption by the simple expedient of asking them to state their qualifications. To oblige the state to ascertain the facts to justify a claimed exemption would impose on the government a difficult and unnecessary burden and expense. It would require determining whether a group was a religious organization, whether the property was "used solely and exclusively for religious worship" and the other requirements specified for exemption. Since liability is the rule and exemption the exception, the burden clearly is on the property owner to show that he comes within the exemption. The statutory scheme universally requires that the claimant of exemption assume the burden of providing the necessary information.

The present cases concern a civil statute requiring from the claimant of exemption a declaration of the facts necessary thereto, *inter alia,* that the claimant ". . . does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities." Petitioners did not object to filing a statement and declaration that they are religious organizations and that the property claimed exempt is "used solely and exclusively for religious worship". What petitioners refused to de-

clare is no less essential to exemption. It is not unreasonable to extend the general statutory scheme of requiring declarations of essential facts to include the matter of overthrow of the government and enemy support.

This conclusion as to the reasonableness of the statute is supported by judicial approval of similar provisions. In *Douds, supra,* the Court upheld the requiring of a non-Communist affidavit from officers of unions seeking to be established as proper bargaining agencies. The Court declared that Congress, with a legitimate concern for keeping the channels of interstate commerce open, could take steps to prevent improper strikes and, as a means thereto, could block communists from leadership in unions. The act of Congress, upheld by the Court, required a declaration like that herein. Referring to this method of implementing the policy decision, Mr. Justice Jackson said:

> "I have sometimes wondered why I must file papers showing I did not steal my car before I can get a license for it. But experience shows there are thieves among automobile drivers, and that there are Communists among labor leaders. . . .
>
> "I conclude that we cannot deny Congress power to take these measures under the Commerce Clause to require labor union officers to disclose their membership in or affiliation with the Communist Party." (p. 435).

Shub v. Simpson, (1950) 196 Md. 177, 76 A. 2d 332, *Aff'd sub. nom. Gerende v. Board of Supervisors,* (1951) 341 U.S. 56, upheld requiring a like declaration as prerequisite to a candidate's name appearing on the ballot in an election for public office. Maryland statute required that the candidate declare that he was not subversive, under provision of the State Constitution barring from public office one who ". . . advocates the overthrow of the Government of the United States or of the State of Maryland through force or violence . . ." The Court said:

> "We construe the affidavit required by Sec. 15 with respect to those desiring to become candidates for public office as a means of preventing such infiltration at its initial stage . . ." (196 Md. at 192, 76 A. 2d at 338.)

Petitioners herein did not qualify or show themselves entitled to the claimed exemption. Upon the record herein they failed to meet the requirement of either the Constitution or the statute. They have not made the declaration in their property return to the Assessor that they do not advocate; also, they have not so alleged in their complaints initiating the present litigation. They have not alleged that they come within the provision of the Constitution and they affirmatively show that they do not come within the statute.

Section 32 is an evidentiary provision. Its purpose and effect are to afford to the Assessor information to guide his compliance with and his enforcement of

the Constitution's prohibition against tax exemption to subversives and to provide a method of answering the question of exemption right or of disqualification. Section 32 sets up and prescribes a procedure for ascertaining and evidencing the fact. Its effect is, by the required declaration, to negative subversive character and to evidence and determine the factual basis for the right to exemption. The declaration when made constitutes *prima facie* evidence of the applicant property owner's non-subversive character. If the declaration is not made the want constitutes failure to meet the prescribed condition for exemption and negatives the right.

Petitioners mistakenly construe Section 32 as setting up a conclusive presumption. They say "the oath creates a conclusive presumption of guilt . . ." (Pet'r Consol. Op. Br. p. 8); and again, that "it creates a conclusive presumption that every one who refuses to sign the oath advocates the overthrow of the government . . ." (ib. p. 36). The waiver or disqualification turns on neither a conclusive nor any presumption of advocacy. It turns on the failure to qualify for the exemption within the statute.

American Civil Liberties Union objects that the California *Constitution* denies tax exemption to those who advocates but that the *statute* denies tax exemption to those who refuse to declare that they do not advocate (p. 10). The statute is an implementing statute and of a kind with others which the California Supreme Court

has declared valid, e.g., the statute requiring the veteran to claim his constitutional tax exemption under penalty of forfeiture for want of claim (*Chesney v. Byram*, 15 Cal. 2d 460); the requirement of statute to file claim of compensation for the taking or damaging of property for public purposes (*Crescent Wharf etc. v. City of Los Angeles*, 207 Cal. 430; *Sala v. City of Pasadena*, 162 Cal. 714); the statutory requirement to register as a condition to exercise of the electoral franchise (*Chester v. Hall*, 55 Cal. App. 61); the requirement of a period of residence within the jurisdiction as a condition of the exercise of the electoral franchise (*Bergevin v. Curtz*, 127 Cal. 86). As to the implementing statute in the veteran case, no presumption was necessary or was raised that Chesney was not a veteran because he did not claim the veteran exemption. Admittedly he met all the conditions for exemption under the grant by the Constitution, but he had not qualified to receive it. He had not followed the method prescribed by the Legislature; he had not claimed the exemption, and the State Supreme Court held that therefore he was not entitled.

Petitioners notice that a dissenting opinion herein by a Judge of the California court commented that "there is no evidence that any church has advocated, or intended to advocate, . . ." (ib. p. 38); and earlier, the brief says that "there is no showing, and indeed, no contention that churches have engaged, or that there is *any* danger that they might engage, . . . in advocacy of doctrine proscribed by the provisions" (ib. p.

32). Similarly, American Civil Liberties Union objects that "there was no finding and there was no charge or evidence that petitioners had engaged or were engaging in such advocacy" (p. 9); and again that petitioners ". . . are not found to be actually engaging in advocacy . . ." (p. 11). Naturally and necessarily there was "no showing" and "no finding", for, as the brief itself notices, "the facts are not in dispute, the allegations in the complaints being admitted by the general demurrers . . ." (ib. p. 4). Non-advocacy or exemption right as based thereon was not pleaded or made an issue in the cases. The complaints made no allegation as to advocacy or non-advocacy, i.e., failed to allege that petitioners were qualified under the Constitution; also affirmatively admitted that petitioners had not qualified by declaration, under the statute, Advocacy was not put in issue and under the pleadings there could be no "showing . . . that churches have engaged" in advocacy.

The situation would be essentially different in a case where a plaintiff pleaded that it did not advocate but that it merely failed or refused to make declaration thereof under the statute, and contended then that it was nevertheless entitled under the provisions of the Constitution. This would have raised question as to right under the provision of the Constitution despite the implementing statute denying exemption by reason of failure to make the declaration of non-advocacy. Herein, however, the complaints made no attempt to

and did not bring petitioners within the conditions for exemption imposed by either Constitution or statute.

The denial of exemption results from refusal to declare non-advocacy, without need of inferring or presuming advocacy therefrom. The refusal need not in reason or logic raise any presumption as to advocacy. The failure to make the declaration which the statute requires as a condition thereof, is fully adequate ground for the denial of the exemption, precisely like the failure to claim the exemption or to show any other qualification therefor.

Refusal to make the declaration might, perhaps, by statute have been made basis for inference of the fact of advocacy. The Legislature may prescribe rules of evidence and declare the effect of evidence as *prima facie* or conclusive as to essential facts. The Legislature, however, did not so formulate the statute herein. It merely prescribed as a condition of exemption that the claimant make a declaration of non-advocacy. The claimant who does not make the declaration has failed to meet the condition and support the burden of establishing his right.

The People of California have declared in Article XX, Section 19 of the Constitution that people or organizations advocating violent overthrow of the government shall not be granted tax exemption. This is a reasonable determination and the Legislature's statute is a reasonable implementation of the constitutional policy.

III.

The Terms of the Declaration Required by Section 32 Revenue and Taxation Code Are Neither So Broad Nor So Vague as to Violate the Due Process Clause of the Federal Constitution.

Petitioners urge that the terms of the declaration required by Section 32 of the Revenue and Taxation Code are ". . . too vague and indefinite to withstand constitutional due process attack" (Pet'r Consol. Op. Br. p. 6). The brief instances as ambiguous situation of fact "a rabbi during the recent hostilities in Egypt preaching that England was right in her actions"; a Catholic priest's criticism of United States action in a hypothetical situation of United States' seizure of the Vatican; "some Americans advocate the admission of Communist China to the United Nations"; and, "Quakers advocating loving and feeding our enemies in North Korea" (Pet'r Consol. Op. Br. p. 9-10). The answer to these conjured difficulties is that none of them involve the prescribed situation of advocating violent overthrow of government or of "support of a foreign government against the United States . . .". A further conjured difficulty is "What is meant by 'against the United States'? Is a position contrary to, or in criticism of, a policy enunciated by the Secretary of State or the President or Congress 'against the United States'?" (ib. p. 10). The question is not difficult when the full phrase is considered, to-wit, "the support of a foreign government against the United

States" and the situation, viz, "in the event of hostilities".

Advocacy constitutes action and instigation of others, not mere opinion or belief, and the subject advocacy is advocacy of violent overthrow, not advocacy of the right to hold a particular idea or belief or opinion. In the phrase "to advocate" "advocate" has become a word of art. In *Gitlow v. New York,* (1925) 268 U.S. 652, the Court said:

> "It does not restrain the advocacy of changes in the form of government by constitutional and lawful means. What it prohibits is language advocating, advising or teaching the overthrow of organized government by unlawful means. These words imply urging to action. Advocacy is defined in the Century Dictionary as: '1. The act of pleading for, supporting, or recommending; active espousal.' It is not the abstract 'doctrine' of overthrowing organized government by unlawful means which is denounced by the statute, but the advocacy of action for the accomplishment of that purpose." (p. 665).

And the California Supreme Court, citing *Gitlow,* adopted this definition of advocacy (Tr. of Record p. 47).

It has before been urged herein that the word "advocate" and its derivatives may cover such things as academic discussion or utterances of abstract doctrine and thus impinge upon constitutionally assured right.

However, as this Court said of a statute very similar to that herein:

> ". . . We should not assume that Congress chose to disregard a constitutional danger zone so clearly marked, or that it used the words 'advocate' and 'teach' in their ordinary dictionary meaning, when they had already been construed as terms of art carrying a special and limited connotation." *(Yates v. United States,* 354 U.S. 298 at p. 319).

Again, in *Dennis v. U. S.,* 341 U.S. 494, this Court said:

> "The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy not discussion." (p. 502).

Article XX, Section 19, when submitted to the voters for adoption, was presented as affecting action. The argument to the voters stated that it was designed to deny exemption to any person or organization "engaging in such activities". And the Court, in *Board of Education v. Jewett,* 21 Cal. App. 2d 64, points out that ". . . there is a wide distinction between teaching and advocacy" (p. 72).

It is clear that the word "advocate" is neither so indefinite as to leave petitioners in doubt as to what it means nor so broad as to impinge upon their constitutional right to freedom of thought and peaceful discussion.

Similarly, no valid objection may be made that the term ". . . other unlawful means . . ." as used in the declaration is vague. Earlier cases before this Court have involved statutes containing language in terms very similar to that in our declaration relating to advocacy and overthrow of government. The Court has approved of statutes with similar language which was claimed to be vague. *Adler v. Board of Education,* (1952) 342 U.S. 485 (". . . any unlawful means . . ." at page 488); *Garner v. Board of Public Works,* (1951) 341 U.S. 716 (". . . other unlawful means . . ." at page 718); *American Communications Assn., CIO v. Douds,* (1950) 339 U.S. 382 (". . . any illegal or unconstitutional methods" at page 386); *Whitney v. California,* (1927) 274 U.S. 357 (". . . unlawful methods of terrorism . . ." at page 360); and, *Gitlow v. New York,* (1925) 268 U.S. 652 (". . . unlawful means"). In these cases the language of the statute was attacked for vagueness. In each case this Court upheld the statute. We submit that the statutory language of our declaration is no more vague nor any more broad than the language so upheld.

Certainly the phrase "unlawful means" does not concern any area of action which petitioners may claim is constitutionally inviolate. The California Supreme Court has dealt with analogous terms and dissipated any indefiniteness that may have existed. *People v. Steelik,* (1927) 187 Cal. 361, 203 Pac. 78, involved the phrases "unlawful acts of force and violence" and

"unlawful methods of terrorism" used in a statute. The Court said the statute

> ". . . does not undertake to define the various acts, the advocacy of which is punishable under the statute. . . . We must look to the general law of the state to determine what are 'unlawful acts of force and violence,' and what are 'unlawful methods of terrorism'. . . . These wrongful acts, most of them already punishable by the criminal law, are denounced by the statute and made felonious when done, or advocated as a means of political or industrial change . . ." (p. 373; 203 Pac. p. 83.)

Petitioners object that the phrase ". . . support of a foreign Government against the United States in the event of hostilities . . ." is "a totally new concept" (Pet'r Consol. Op. Br. p. 17). We may concede that the phrase has not been used in the loyalty cases which have come before this Court. The fact, however, that terms have not been previously subjected to legal scrutiny does not make them, therefore, indefinite. The indefiniteness test does not require that only shopworn phrases may be used in statutes. Rather, the test is whether the language challenged ". . . conveys sufficiently definite warning as to the proscribed conduct *when measured by common understanding and practices.* The Constitution requires no more." *(United States v. Petrillo,* (1947) 332 U.S. 1 at page 8.) (Emphasis supplied.) We submit that the language used in the declaration meets this test.

Although the precise phrase may not heretofore have been challenged in this Court, similar language was challenged in *Gorin v. United States,* (1941) 312 U.S. 19, which involved the Espionage Act which prohibited obtaining information "related to" and "connected to" national defense with intent or reason to believe it was to be "used to the injury of the United States or to the advantage of any foreign nation." Held, that the provisions were not unconstitutionally vague or indefinite, the Court saying:

> "But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. . . . The language employed appears sufficiently definite to appraise the public of prohibited activities and is consonant with due process." (p. 28).

It is not necessary to go into every possible contrived ambiguity even if this were, as petitioners claim, ". . . in the area of religious belief and conscience . . .", in view of the strong presumption that the State court, in applying the statute, will avoid an unconstitutional application. Because of this presumption, where a constitutional construction may be given to a statute, this Court itself will so construe it. *(Fox v. Washington,* (1915) 236 U.S. 273, 277; *Knights Templar's Indemnity Co. v. Jarman,* (1902) 187 U.S. 197, 205; *Presser v. Illinois,* (1886) 116 U.S. 252, 269.) This is especially true in the case at bar where it does

not appear from the record or the opinion below that overbreadth was argued so that the California court might define the limits of the statute.

This doctrine of construction will be applied to state statutes even after the state court has had an opportunity to limit the scope of the statute and has not fully done so. This was the situation in *Garner v. Board of Public Works,* (1951) 341 U.S. 716, a case which required much more flexibility of interpretation than the cases at bar. This Court there read scienter into the statute on these grounds, saying:

> "We have no reason to suppose that the oath is or will be construed by the City of Los Angeles or by California courts as affecting (activities allegedly within the protection of the Constitution). . . . We assume that scienter is implicit in each clause of the oath. As the city has done nothing to negative this interpretation, we take for granted that the ordinance will be so read to avoid raising difficult constitutional problems which any other application would presents . . . "The judgment . . . is affirmed on the basis of the interpretation of the ordinance which we have felt justified in assuming." (p. 724).

This Court need not take as great a step in the cases at bar as it was willing to take in the *Garner* case. And we submit that the California court here merits faith equal to that accorded it in 1951. Now, as before, the same grounds exist to believe that the words of this

declaration will be so construed as to avoid raising constitutional problems. For this, and for the other reasons above stated, the declaration requirement should be held valid.

IV.

Entirely Sound Was the California Supreme Court Determination That the Exception of Householders From the Requirement to Make the Declaration of Non-Advocacy Did Not Constitute Denial of Equal Protection.

Section 32 excepts householders from the requirement of a declaration of non-advocacy. Its provision is that "any statement, return or other document in which is claimed any exemption other than the householder's exemption . . . shall contain a declaration . . ." of non-advocacy. Householders, thus, are not within the provision of Section 32, both because expressly excepted therefrom and also because they need not claim exemption. Unlike churches and orphanages, colleges, veterans and welfare organizations which must each year claim their exemption or for failure to do so waive it, the householder need not claim.

Such exception from the declaration requirement, like the excuse from the requirement to claim the exemption, does not constitute an invalid classification or involve want of equal protection. The different treatment is clearly based on valid classification. The test of a valid classification is that "the classification

may not be arbitrary and must rest upon real differences . . ." *(Northwestern Mutual Life Ins. Co. v. Wisconsin,* (1918) 247 U.S. 132 at 139).

The power of the states to classify for the purpose of legislation is of wide range and flexibility *(Williamson v. Lee Optical,* (1955) 348 U.S. 483; *Continental Baking Co. v. Woodring,* (1932) 286 U.S. 352); and "the power to make distinctions exists with full vigor in the field of taxation . . ." *(New York Rapid Transit Corp. v. New York,* (1938) 303 U.S. 573 at 578). In an opinion upholding an unequal tax on stores (the tax per store was graduated according to the number of stores under the same management), Mr. Justice Roberts stated:

> "The principles which govern the decision of this cause are well settled. The power of taxation is fundamental to the very existence of the government of the States. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupations." *(State Board of Tax Comm'rs. v. Jackson,* (1931) 283 U.S. 527 at page 537.)

A State may classify for purposes of taxation at different rates, *(Puget Sound Power & Light Co. v. Seattle,* (1934) 291 U.S. 619; *Heisler v. Thomas Colliery Co.,* (1922) 260 U.S. 245); for taxing some sub-

jects and granting exemptions to others *(Bell's Gap R. R. Co. v. Pennsylvania,* (1890) 134 U.S. 232); and, therefore, for granting exemptions to different groups at different rates or in different amounts. Our cases fall within the latter category, in that petitioners and others in their class must make full claim for exemption while the householder's exemption is limited to claim to and exemption of only $100 of assessed personal property (Cal. Const. Art. XIII, §1½ and §10½). This classification and recognized difference in tax treatment, has stood since 1904.

The same classification has long existed in the State as between the procedures required of members of the different classes in order to qualify for an exemption. In 1903 the Legislature enacted Section 3611 of the Political Code to require religious institutions claiming exemption to file an affidavit and to declare use of the property "solely and exclusively for religious worship". There is no such requirement as to the $100 householder's personal property exemption (Tr. of Record p. 43). Petitioners have never complained of this unequal treatment, nor do they now.

> "[A] distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it . . ." *(Rast v. Van Deman & Lewis Co.,* (1916) 240 U.S. 342 at p. 357.)

Administrative convenience and efficiency is one of the accepted grounds of classification *(Williamson*

v. Lee Optical, supra; Winona & St. Peter Land Co. v. Minnesota, (1895) 159 U.S. 526). Self-evident are some of the administrative reasons for the state's determination of the desirability of this classification, e.g., the far greater number of householders' exemptions than exemptions of other classes, and the difficulty of processing and enforcing here on an individual basis the requirements applicable to other groups. As a practical matter, the Legislature can well conclude it would cost more to process declarations from small householders with no more than $100 of assessable property than to grant exemption. The difference between the classes created by the Legislature is illustrated by the assessments herein of $94,320 and $6,420 (Tr. of Record p. 4, l. 2) as compared with $100 in the case of an applicant for the householder's exemption. Such administrative considerations constitute a reasonable ground for the classification. The distinction is not arbitrary; it is not a denial of equal protection of the laws.

V.

The Determination of the California Supreme Court Was Sound That There Was No Violation of the First and Fourteenth Amendment Rights Such as to Render Unconstitutional the Statute and Declaration Requirement.

1. Neither California Constitution Article XX, Sec. 19 Nor California Revenue & Taxation Code Sec. 32 Infringes on Freedom of Religion.

Traditionally, the states have made constitutional provision for the exemption of property used for religious purposes. The ground advanced to justify such exemption is that the exempt property performs a public function. Such ground without qualification is not adequate to justify the exemption in the face of the provision of the Federal Constitution that "Congress shall make no law respecting an establishment of religion . . ." The principle of separation of church and state renders it clear that an exemption may not be granted for *religious* reasons and that the state can grant exemptions to churches only on the ground of the church's *non-religious* benefit to the community. It necessarily follows that the state may deny exemption to churches on non-religious grounds. The fact of denial of exemption or the requirement by the statute of a declaration does not of itself raise any problem of restraint on or violate freedom of religion under the First and Fourteenth Amendments.

Neither violent overthrow of government nor war-time support of the enemy nor advocacy thereof constitute religion; but even if it did, they yet are not such religion as is assured constitutional freedom.

We submit that the proscribed advocacies are not religion. True, in *West Virginia Board of Education v. Barnette,* 319 U.S. 624, this Court held invalid on religious grounds a resolution requiring a salute of the flag, as applied to Jehovah's Witnesses. The Witnesses' justification for their refusal to comply was that the flag was a "graven image" and that saluting the flag would violate the Bible command of Exodus 20:4, 5. Herein petitioners can assert no such claim as ground for refusing to make the declaration. The very nature of the declaration itself distinguishes it from the flag salute in the *Barnette* case. As the California court herein commented "Since this oath is 'obviously not a test of religious opinion' the plaintiff is not excused from making it any more than any other taxpayer" (Tr. of Record, p. 50); and as further pointed out by the Court, petitioners' principles do not indeed preclude oaths. They have already made sworn affidavits in their tax returns and in filing the complaints instituting the present actions. Petitioners declare that "the principles, moral and religious, of the First Unitarian Church of Los Angeles compel it, its members, officers and minister, as a matter of deepest conscience, belief and conviction to deny power in the State to compel acceptance by it or any other church of this or any other oath of coerced affirmation

as to church doctrine, advocacy or beliefs" (Pet'r Consol. Op. Br. p. 5). These "principles" specify and concern only affirmation as to "church doctrine, advocacy or beliefs". The proscribed advocacies as to overthrow of government and war support of the enemy certainly cannot be their church doctrine or belief or religion. Even if the proscribed advocacies were religion, not every religious practice thereby gains protection under the Federal Constitution. This limitation is clear and has long been recognized and declared by this Court. The experiences of the Mormon Church and its practice of polygamy are a case in point. This Court in upholding the oath requirement describing polygamy as a pernicious crime, said that "to call its . . . advocacy a tenet of religion is to offend the common sense of mankind." (*Davis v. Beason,* (1890) 133 U.S. 333 at 342.) And in *Late Corporation of Church of Jesus Christ of Latter Day Saints v. United States,* (1890) 136 U.S. 1, *modified* (1891) 140 U.S. 665, (1893) 150 U.S. 145, the Court affirmed the taking by the United States of property of the Morman Church and the application of it to other charitable purposes under the *cy pres* doctrine on the grounds that in view of its advocacy of polygamy, the Morman Church was no longer fulfilling its charitable purposes. Referring to polygamy the Court said:

> "One pretence for this obstinate course is, that their belief in the practice of polygamy, or in the right to indulge in it, is a religious belief, and,

therefore, under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugs of India imagined that their belief in the right of assassination was a religious belief; but their thinking did not make it so. The practice of suttee by the Hindu widow may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one, on that account, would hesitate to brand these practices, now, as crimes against society, and obnoxious to condemnation and punishment by the civil authority." (136 U.S. 49, 50.)

And see, *Cleveland v. United States*, (1946) 329 U.S. 14.

The similarity between the *Mormon* cases and the instant cases is clear. Can the advocacy of violent overthrow of the government or of war-time support of a foreign government against the United States be any more immune from state regulation on the ground of religious belief than the practice of polygamy? Polygamy was made a crime by statute; advovacy of violent overthrow of the government is made a crime by the Smith Act, and support of a foreign government against the United States in the event of hostilities is treason (U. S. Const. Art. III, §3, cl. 1; 62 Stats. 807 (1948) 18 U.S.C. §2381.) Surely it cannot be argued that advocacy of treason can claim protection as religious practice. The declaration does not

deal with any religious practice within the protection of the Fourteenth Amendment.

The religious issue and the issue of separation of Church and State are false issues herein. The question involved is not any question of conscience, or of opinion, or of belief, either religious or other belief, or of divided loyalty as between church and state, or any issue of a religious test oath. It is merest chance that these particular exemption claimants and/or advocates happen to be church organizations.

Petitioners' brief complains that the subject requirement proscribes advocacy and thereby has ". . . invaded the sphere of the intellect and spirit" (Pet'r Consol. Op. Br. p. 7); and ". . . requires the church to give up its right of moral judgment . . ." (ib. p. 19), and to "forswear its right to moral judgment . . ." (pp. 28-29). Petitioners seriously ask "Can the church be forced to surrender its moral convictions to the state . . . ?" (ib. p. 28). Petitioners urge that it is "an important role of the church to criticize . . . actions of the government" (ib. p. 20) and object that under the subject provisions ". . . religion has not been preserved from censorship and coercion . . . in . . . matters of the spirit . . ." (ib. p. 20); and petitioners invoke the principle that "courts cannot sit in judgment on the verity of religious faith" (ib. p. 22). Petitioners even go to the length of submitting their contention as a truism and beyond question. Their measured declaration is the proposition, "that it is a

religious tenet cannot be gainsaid" (ib. p. 23). Thoroughly sound is the answer by the California court herein:

> "The plaintiff is affected not because it is a religious organization, but because it is a taxpayer favored in the law by an exemption for which it has refused to qualify. The plaintiff has failed to point out what tenet or doctrine of its faith is infringed upon by compelling it to qualify for the exemption." (Tr. of Record, p. 48).

Petitioners' brief and the American Civil Liberties Union Amicus Curiae brief quote the ringing declarations and roll the sonorous phrases of the great decisions of this Court. Their spirit and language are inspiring. The petition quotes Mr. Justice Frankfurter's language in the *Barnette* case as declaring assurance that:

> "If there is one fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein." (ib. p. 23).

Justice Frankfurter's ringing apostrophe is quite inapplicable here. Advocacy of violent overthrow of government or of war-time support of the country's enemy is outside the bounds of what is merely not "orthodox". "Not orthodox" is certainly soft impeachment. So minimizing such conduct does not justify it.

Petitioners and *amici curiae,* we submit, cannot transmute the proscribed advocacies or force and violence into religion or equate them with religion, even if in petitioners' or *amici's* concept of things they were religion. Proscription against their exercise would constitute no unconstitutional limitation upon religious practice, and petitioners and *amici* yet could not claim constitutional protection for their exercise.

The provisions of the California Constitution do not concern petitioners' beliefs or principles or tenets. Quite extravagant is petitioners' representation that "the oath . . . has to do with what the church advocates, or rather what the church does not advocate" (Pet'r Consol. Op. Br. p. 25). To the contrary, the oath does not concern advocacy in general or *in vacuo.* It concerns no other advocacy than the two classes of advocacy specified. The church, or any other exemption claimant, need not abstain from all advocacy—only from the proscribed advocacies. Petitioners are not confronted with the alternative of foregoing permitted advocacies. Quite unwarranted is the purported dilemma and the solution which petitioners contrive, to-wit, "the safest thing to do is not to advocate at all" (ib. p. 12).

The Civil Liberties Union brief charges that "no distinction is drawn in the California Constitution or statute between advocacy of abstract doctrine and advocacy directed at promoting unlawful action" (p. 10). True, "no distinction is drawn," but because "abstract

doctrine" is not at all covered by either the Constitution or statutory provision. "Abstract doctrine" is not their subject at all. Instead, only advocacy of violent overthrow and of war-time support of the enemy. The provisions no more concern "abstract doctrine" than they consider most other things, e.g., murder, or larceny, or income tax evasion, or illegal entry, or the price of wheat.

Petitioners' brief objects to the limitation placed upon the proscribed advocacies, by soliloquy that "Historically, concepts of loyalty shift and change as the forces pulling and tugging within the state lose or gain strength" (Pet'r Consol. Op. Br. p. 28). No "concept of loyalty," however, would permit advocacy of violent overthrow of one's country or of war support to the enemy.

American Civil Liberties Union objects to the declaration requirement as a "political loyalty test" (p. 15). The Declaration, however, constitutes no pledge of loyalty or agreement nor of support of the government. It does not require allegiance and the bended knee, but instead, would restrain the upraised or brandished sword. The Civil Liberties Union analogizes the relation of the citizen to his country and the limitation against his advocacy of its violent overthrow to the situation of the American Colonies and Great Britain in 1776 and quotes from the Declaration of Independence (pp. 17, 18). The government from which the American Colonies declared their independence

was not their government or a government in which they had any voice or representation. That was the very reason for the Declaration, viz, that the foreign government of Great Britain had the "design to reduce them under absolute despotism" and because of "having in direct object the establishment of an absolute tyranny". The American Colonies had the power and the right to be free from a foreign and tyrannous government superimposed on them and in which they had no voice or representation. British government was imposed from abroad. It was not a government ". . . deriving their just powers from the consent of the governed." The governed had not consented to and did not establish the government—had no representation in or voice or control over it. They could not change it. No method of change was available to them.

Also, of course, the Declaration of Independence did not declare the right to overthrow, and the American Colonies were not concerned with the overthrow or the existence of the Government of Great Britain. They sought merely to free themselves from Great Britain and British rule.

American Civil Liberties Union seeks to interpret the declaration requirement as attempt by California to prevent criticism of public officers in their conduct of the public business. It charges that ". . . the real purpose of the challenged California laws is to prevent or abridge free expression of opinions which are critical of the agencies and operations of the State and

Federal governments, particularly in respect to their possible misdoings" (Am. Cur. Br. p. 16). Not so, at all. The question is not as to the right to hold and express moral judgment, or to object to or to criticize bad conduct in public office. All would agree that in a democracy, if the official conduct of those in public office is venal or corrupt or morally wrong, the church and the citizens are free to say so and to protest.

A question might be what one may do if he disapproves of the conduct of officials or the form of government, what he may do as a result of his judgment or opinion, and how he may act on it. The method for elimination of persons in office is provided. Incumbents can be removed or replaced. Change in the structure of government may be made, but only within the law. In a democracy the critic is not free to "overthrow the government by force or violence or other unlawful means." Reforms have been made and changes in structure has been frequent. Our Federal Constitution has twenty-two amendments. The processes of law include even the initiative and referendum, and impeachment and recall. Overthrow of government, or even forceful or violent change in government, is proscribed. The subject provisions repress the subject advocacies for the very reason that they are advocacy of an unlawful end by unlawful means.

We find similar basic departure from and misconception of the issue herein by Philadelphia Yearly

Meeting of Friends. Again, almost entire failure to consider or discuss the true issues involved. The phrases "freedom to seek the truth and the freedom to act upon the truth" head its "Argument" (p. 4). This brief again quotes from the great decisions such ringing declarations as that from the *Ballard* case: "With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted . . ." (p. 5). The brief quotes from a "Report to the Friends' World Conference" the need to ". . . seize the ethical and spiritual significance of the whole situation before us, and deal with it from above the storm and controversy and propaganda of the moment" (pp. 5-6). The brief talks about a requirement for ". . . a disavowal of belief" (p. 6) and of apprehension that ". . . non-treasonable belief and actions . . . might be foreclosed by such a declaration . . ." (p. 6). Similarly, American Civil Liberties Union refers to "religious principles" and "moral judgment" (p. 17), and most strangely appeals to the Sermon on the Mount to justify the proscribed advocacy of unlawful violent overthrow of government and of war-time support of the enemy (p. 20). In order to practice the teachings of the Sermon on the Mount must not the church, or anyone else, forbear from advocating forceful and unlawful overthrow of government? To merit the blessings assured to peacemakers, must they not for-

bear from advocacy of war-time support of our country's enemy?

The Philadelphia Friends divert attention to "beliefs for which man is accountable only to God" (p. 7); to "the supremacy of conscience" and the "philosophy which sets the state above the moral law" (p. 7), with appeal to a "higher authority"; the "authority of God and conscience" (p. 8); to "the dignity and worth of the individual" (p. 8) and the principle of "absolute liberty of conscience" (p. 10), and instance the "time when the Stuart monarchs sought to prescribe for Englishment what should be orthodox in religion . . ." (p. 9), with test oaths for "enforcing conformity to the state's religion" (p. 10).

If we return to the question involved, the subject is the provision of the California Constitution and statute concerning the advocacy of overthrow of government by force and violence and the advocacy of support of a foreign government against the United States in the event of hostilities. Such advocacy cannot be called religious speech or religious doctrine or belief. To so assert is merely to pervert the meaning of language. It represents almost Humpty Dumpty's attitude with regard to the meaning of words, that they mean whatever you want them to mean. In Lewis Carroll's child story-book, Alice encounters Humpty Dumpty in Wonderland and they talk together. In the course of their conversation Humpty Dumpty uses the word "glory" and says that "glory" means "a nice

knock-down argument." To the puzzled Alice he easily justifies his strange meaning for the word. Says he, a word "means just what I choose it to mean." As between the speaker and the word which he uses, Humpty Dumpty explains, "the question is which is to be master—that's all."* Just so, petitioners and *amici curiae* here assume to be "master" of the words "religion," "religious principle" and "moral conviction," and moral law, liberty of conscience, and "freedom of thought," "God and conscience," and "higher authority." Summoning up such words and the basic principles and fundamental rights which they stand for and connote, petitioners present them quite as though they constituted here "a nice knock-down argument." When we complain to our opponents, as did Alice to Humpty Dumpty, "I don't know what you mean" by your so-called "religious principle" and "moral judgment," etc., they reply, as did Humpty Dumpty, "Of course, you don't—till I tell you."

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*In Alice's talk with Humpty Dumpty, she said she preferred birthday presents to "unbirthday presents". Humpty Dumpty preferred "unbirthday" presents, for, said he, there is only one birthday in a year but 364 "unbirthdays", and he then pointed his all-conclusive argument: "And only one for birthday presents, you know. There's glory for you!"

"I don't know what you mean by 'glory'," Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't—till I tell you. I meant 'there's a nice knock-down argument for you!'"

"But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, *"it means just what I choose it to mean*—neither more nor less."

"The question is," said Alice, *"whether you can make words mean so many different things."*

"The question is," said Humpty Dumpty, "which is to be master—that's all."

("Alice in Wonderland and Through Looking-Glass." Chap. VI, "Humpty Dumtpy.")

Petitioners' brief closes its excursion into religious principle and history with the suggestion that "enough has been shown, we think, to demonstrate that in the light of history and tradition, the requirement of the oath here does indeed impinge upon the freedom of religion and the separation of church and state"-(Pet'r Consol. Op. Br. pp. 27-28). Petitioners' major premise is valid enough, that religion must be permitted and must be free. The minor premise, however, is false, that force and violence to overthrow government are religion or have the rights of religion. Also, force or violence to accomplish such overthrow and such support are not the means or instruments of religion.

There is nothing of religion about the unlawful and violent overthrow of government or the advocacy thereof. The Constitution, form, administration and support of government are matter of government, and not of religion. The realm and scope of the two are entirely distinct and separate.

Advocacy of violent overthrow of government is not religion merely because it is advocacy by a church. The First Amendment assurance of religion and the free exercise thereof is, of course, not assurance to religious institutions or churches as such. When an activity, whether by a church or by any other, is not religion it does not fall within the provision.

Petitioners contend that no oath or declaration can be required from a church no matter what may be the oath or declaration. The brief says:

> "It is not the content of the oath alone, but the coercion of Church by State which truly penetrates the wall and establishes the Church as subject to the will of the State." (Pet'r Consol. Op. Br. p. 28)

More extremely petitioners say "it is as churches that petitioners are affected here, a fact which cannot be overlooked and in the light of which the oath must be judged" (ib. p. 24). Petitioners' argument seems seriously to be that to require an oath from a church would violate assurances given to religion, independent of the content of the oath. They represent that "the oath, though couched in political terms, is religious in its effect on the church for it forces the church to acknowledge that the state has the power to compel the state to confess its advocacy" (ib. p. 24). Petitioners cannot indeed urge that whatever the church does is religious or that whatever the church touches becomes worship. The advocate may indeed be religious, but advocacy is religious only on matters religious. When the church's advocacy becomes advocacy of non-religious matters, it is no longer religious advocacy or religion. Obviously, advocacy by a church need not be religious, not advocacy of polygamy, nor advocacy of the cause of a particular candidate or party in a political election; not advocacy of violent overthrow of government or of war-time support of the enemy. Assertion, however positive or loud, that such advocacy is worship or religion cannot constitute it such.

The petition asks "Can the church be forced to surrender its moral convictions . . . ?" (ib. p. 28). What are these "convictions"? Humpty Dumpty must tell us what he means. Are they indeed "moral convictions"? Quite mistaken is petitioners' idea that they may keep the answer secret and that we must accept their mere *ipse dixit*. Utterly mistaken would seem the brief's dubious proposition that "it is not the content of the oath alone but the coercion of church by state which truly penetrates the wall and establishes the church as subject to the will of the state" (ib. p. 28).

It is beside the point to object that force is futile within the realm of conscience and the mind. The "futility" or effectiveness of the constitutional provision, moreover, is another question. That is to say, the question of the policy and the wisdom of their adoption were for the determination of the People adopting the constitutional provision and for their Legislature in enacting the statute. Nevertheless, it is only *"within the realm of conscience and the mind"* that force is futile. Force is not "futile" to protect property and rights, or to prevent or remedy wrong. Force against conscience may accomplish nothing, but force may preserve and remedy and may achieve worthy ends. Might or force may be called upon to protect the right—right need not be helpless, weak or ineffectual. In our Western philosophy (whatever may be the reasoning of some Eastern philosophies) force, itself, is neither right nor wrong. Force is outside the realm of ethics or religion.

Petitioners' argument and error are the idea that advocacy of force or violence and the overthrow of government may become religion and may concern the church and religious worship merely because advocacy by a church. Force and violence continue force and violence. Overthrow of government, even a change of government, whether by force and violence or in authorized constitutional manner and by established and accepted political methods, continue to be secular and not matter of religion; and advocacy of overthrow or of change is not religious advocacy. This is illustrated by the oath required of the public employee by the Levering Act, *inter alia,* that he does not advocate the forcible overthrow of government. This oath the state court has said is "obviously not a test of religious opinion . . ." *(Pockman v. Leonard,* 39 Cal. 2d 676, 686).

Thus, petitioners and their amici earnestly urge fundamentals of principle and of rights which all accept and on which all agree. All of this utterly ignores the fact and the subject of discussion. It completely ignores the question presented. What was it that the churches were required to declare, and what was it they refused to declare? Merely, that they do not advocate the violent overthrow of our country or war-time support of her enemy. Our question yet calls for answer: How is advocating the overthrow of government within the area of religion or of worship? It constitutes palpable misreading of the limitation

against the proscribed advocacies to assert that it violates religious doctrine or belief. As the California Supreme Court soundly declared herein, "This oath is obviously not a test oath of religious opinion" (quoted Pet'r Consol. Op. Br. p. 21; Tr. of Rec. p. 50).

2. Neither California Constitution, Article XX, Section 19, Nor California Revenue and Taxation Code, Section 32, Abridge Petitioners' Right of Free Speech Guaranteed by the Fourteenth Amendment.

Undoubtedly the subject provisions of Constitution and statute do to a degree infringe the liberty to speak of those churches which advocate the proscribed type of action. However, on many occasions this Court has declared that not every infringement of the liberty to speak is unconstitutional. In his concurring opinion in *Dennis v. United States*, 341 U.S. 494, Justice Frankfurter has classified the cases in which conflicts between speech and competing interests have been resolved. (341 U.S., pp. 529-539.) In many of these cases the scale has tipped in favor of the interest competing with speech, and the restriction on speech has been upheld. The problem here is to ascertain, define and delineate the conflicting interests of the individual and of the States and to weigh and evaluate those interests.

Of course involved is the interest of maintaining free speech. The interest of the Nation and the States

in preserving freedom of speech and the benefits thereof have often been considered by this Court and need not be here reviewed. The State interest sought to be promoted and forwarded by the church exemption has not recently had detailed attention by this Court.

However, many State courts have had occasion to examine the particulars of the relation between religion and religious practice and its secular effects on the law and the morals and mores of a community. For example, the California Supreme Court in this case below said:

> "There are additional interests with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included is the interest of the state in maintaining the loyalty of its people and thus safeguarding against its violent overthrow by internal or external forces. This legitimate objective is sought to be accomplished by placing in a favored economic position, and thus to promote their well being and sphere of influence, those particular persons and groups of individuals who are capable of formulating policies relating to good morals and respect for the law. It has been said that when church properties are exempted from taxation 'it must be because, apart from religious considerations, churches are regarded as institutions established to inculcate principles of sound morality, leading citizens to a more ready obedience to the laws.' " (Tr. of Rec. p. 51-52).

In *State vs. Woodruff*, 152 Fla. 84, 13 So. 2nd, 705, the Florida Supreme Court said:

"Every system of law rests on a corresponding system of ethics that directs its course. . . . We are committed to a free exercise of religious opinion but since our system of law rests on Christian ethics one would not be permitted to set up a harem and practice polygamy in Florida under the guise of religious freedom because polygamy is contrary to approved moral standards. If our law were predicated on Mohammedan ethics, the converse would be true. If it were predicated on pagan ethics, I could sell my child as a slave and if predicated on still another system and I belonged to the sect known as Dukhoborrs, I would be permitted to traverse the highways nude under the guise of religion, but not so in our country because our system of moral teaching raises a different standard that the law must conform to.

"The reason the Bill of Rights immunized religion and the press from governmental interference is not far to seek. . . . The authors of the Bill of Rights descended from ancestors who had been persecuted and condemned to rot in jail for indulging religious and secular beliefs. It took them a thousand years to wrest these liberty from arbitrary kings, . . . But the church and the press were not liberated from governmental interference carte blanche; to their liberty was attached an obligation to the public on parity with the freedom given.

". . . Our whole theory of democratic policy as well as law rests on like moral standards and the church is a medium by which they are refined. . . . Herein lies the obligation of the church and the press to point each generation the way to these virtues and failing in this, they fail in their debt to the Bill of Rights." (pp. 705-706.)

In *State v. Mockus,* 120 Me. 84, 113 Atl. 34, the Supreme Court of Maine recognized the strong influence of religion on our basic political institutions:

". . . from the dawn of civilization, the religion of a country is a most important factor in determining its form of government, and that stability of government in no small measure depends upon the reverence and respect which a nation maintains toward its prevalent religion . . . religion teaches acknowledgement of the existence, presence, knowledge, and power of God, as related to human beings in all walks of life; this religion teaches dependence upon God; this religion teaches reverence toward God and respect for Holy Scripture. Even as we are writing these words the man who is about to assume the duties of the high and responsible station of President of these United States, following the unbroken custom of more than a century, and to the end that his official vow may be more impressive and binding, reverently says, 'So help me God,' and then pausing, with equal reverence, salutes the Holy Scripture by a kiss. Congress and State Legislatures open their sessions with prayer addressed to the God of the Christian religion. Judicial tribunals,

anxious to discover and apply the truth, the whole truth, and nothing but the truth, require those who are to give testimony in courts of justice to be sworn by an oath which recognizes deity. Thus it will be seen that there is acknowledgement of God in each coordinate branch of government." (113 Atl., 42.)

The influence and place of religion in the culture of our nation is stated by this Court in *Church of the Holy Trinity v. United States,* 143 U.S. 457:

"But beyond all these matters no purpose of action against religion can be imputed to any legislation, State or Nation, because this is a religious people. (p. 465.) If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and society, we find everywhere a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;' . . . . and the closing of courts, Legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and

many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation." (p. 471).

Alexis de Tocqueville in his *Democracy in America* (The Henry Reeve Text, New York, 1951, vol. 1, ch. 17) describes religion as the first of America's political institutions, and says,

> ". . . Religion is much more necessary in the republic . . . than in the monarchy . . . ; it is more needed in democratic republics than in any others. *How is it possible that society should escape destruction if the moral tie is not strengthened as the political tie is relaxed? . . .*" (Emphasis added.)

In 1908 James Barr Ames, Dean of the Harvard Law School, in a lecture on "Law and Morals" (reprinted in *Jurisprudence in Action,* Baker, Voorhis & Co., at pp. 5-26) sketched the development of the English common law to show the significant influence of moral concepts in the growth and development of the law, particularly in the field of equity. In sum, religion and religious practice profoundly influence, even control, the mores and ethics of a society, matters of deep concern to the state.

In 1952 the People of California considered that those who advocate the violent and lawless overthrow of government or war-time support of the enemy have an influence in the community directly contrary to

what they seek to promote by the grant of church exemption. And the People concluded that such advocates do not afford the *quid pro quo* for which the exemption is granted, and that the exemption should be withdrawn. The reason for withdrawal was not a "clear and present danger" or any danger of overthrow of government or of attempted overthrow, but rather to make effective the exemption inducement and reward and to withdraw the subsidy from those who do not forward the purpose of the exemption.

The present cases involve a conflict between the interest of the state to improve and raise the moral and ethical standards of the people on the one hand, and on the other hand the interest to preserve the right of free speech and communication. The moral and ethical standards of the people are undeniably a substantial interest of the state; and on the other hand, advocacy of violent overthrow of government has some claim to protection as speech, and merely because it is speech. Its claim, however, is not substantial. Its value, if any, is the stimulus it provides for rebuttal (see Mr. Justice Frankfurter concurring opinion in *Dennis v. United States*, 341 U.S. 494, 549). As there declared,

> ". . . on any scale of values which we have hitherto recognized, speech of this sort ranks low."

The question is whether the interest in preserving free speech and communication is so overwhelming that the

interest in maintaining and raising the moral and ethical standards of the people must be subordinate to and must bow before and be defeated by the type of speech here considered.

Answer to the question whether the right of free speech over-balances the interest of the state in maintaining and advancing the moral and ethical standards of its people requires a measuring or weighing of the opposing values. Such value judgment was properly to be made and was made by the People of California in enacting the subject provision of their Constitution; and it is the People of California who are most concerned and will most feel the effects of their decision. This Court should not here assume super legislative power where the people of the state have acted reasonably, even if the Court were possibly to feel that it might have acted differently had the choice been left to it. Certainly, it will be conceded that the interest of the state in the morals and ethics of its people is as important as in the free flow of commerce (*American Communications Assn. v. Dowds,* 339 U.S. 382); or, as in the use by the people of the public parks and streets (*Niemotko v. Maryland,* 340 U.S. 268; or, as in the trade policies of a state (*Giboney v. Empire Storage and Ice Co.,* 336 U.S. 490); or, as in the quality of the literature being disseminated to the public. (*Kingsley Books, Inc. v. Brown* 354 U.S. 436; *Roth v. United States,* 354 U.S. 476).

Petitioners cite (Pet'r Consol. Op. Br., p. 15) the statement of dissenting Justice Traynor of the California Supreme Court that

> "The issue thus narrows to whether a state can properly restrain free speech in the interest of promoting what appears to be eminently right thinking. A State with such power becomes a monitor of thought to determine what is and what is not right thinking (R. F. 63)."

This statement, perhaps, oversimplifies the issue. We submit it has not been an unreasonable determination by the People that a democratic or republican form of government can thrive or can best exist within a particular type of ethical and cultural climate. Certainly anyone would concede that a democracy could not exist if the majority of its citizens had anarchistic beliefs which they intended to put into practice at the opportune moment. Too, it would seem that conditions of real personal liberty could long survive only if most members of the community believe that others have rights that must be respected. The dispositions of a people are in great part determined by their cultural and ethical environment. Criminal statutes implicitly recognize the various aspects of the social culture, e.g., the right to own and possess property free from disturbance by others. But the protection of criminal laws to our government, our institutions and our culture is of a negative type. May not the state employ, as well, positive measures to strengthen the institu-

tions upon which our freedoms and form of government rest? For this Court to acknowledge the existence of such power in the State would no more make the State a "monitor of thought" than has this Court's recognition of the State's power to tax the instrumentalities of interstate commerce destroyed or substantially impeded interstate commerce.

Petitioners argue (Pet'r Consol. Op. Br. pp. 14-19) that Article XX, Section 19 restricts not only the type of advocacy whose prohibition was upheld in *Dennis v. United States, supra,* but also mere theoretical prophecy, discussion of ideas, doctrine, etc. This contention is confuted by examination of the majority opinion. Therein the Court very definitely states:

> "In the present case it is apparent that the limitation imposed by section 19 of article XX as a condition of exemption from taxation, is not a limitation on mere belief but is a limitation on action—the advocacy of certain proscribed conduct. What one may merely believe is not prohibited. It is only advocates of the subversive doctrines who are affected. Advocacy constitutes action, and the instigation of action, not mere belief or opinion. (R. F. 47).

And again the California Court said:

> "As above noted the advocacy of the conduct prohibited [by Article XX, Section 19] has been made criminal by Congress (Smith Act, 54 Stat. Part I, p. 670 [1940]), and through numerous

> statutory provisions by state legislatures it is well established that such advocacy is against local public policy" (R. F. 49).

And yet again:

> "The Dennis case involved the validity of the Smith Act which prohibited and made criminal the advocacy of the activities denounced by the people of this state in its Constitution . . . In the present case the constitutional provision is concerned with those who advocate the same prohibited activity" (R. F. 53).

That is to say, the California Supreme Court clearly defines its interpretation of Article XX, Section 19 as that type of advocacy whose prohibition was approved in *Dennis v. United States, supra.* Such limitation by the California court of the subject provisions must conclude any attempted doubt as to their meaning. That interpretation will be accepted by and be binding on this Court *(Winters v. New York,* 333 U.S. 507; *Poulos v. New Hampshire,* 345 U.S. 395). Petitioners are limited to the majority opinion to divine the holding of the case.

American Civil Liberties Union argues (Am. Cur. Br. pp. 9-17) that the requirement by Section 32 of a non-subversive declaration constitutes a prior restraint on speech. The term "prior restraint" has to do with censorship, the enjoining of future communication and the like. It involves present control attempted over

future speech (*Near v. Minnesota,* 283 U.S. 697; *Kingsley Books v. Brown,* 354 U.S. 436). The declaration required by Section 32 is not that the declarer will *not in the future* advocate violent overthrow or war-time support, only that he does not *now* so advocate. The oath does not involve future action or utterance or prior restraint.

Nor, as American Civil Liberties Union further argues (ib., p. 15), does Article XX, Section 19, make political loyalty a test for church exemption. A church organization may be wholly disloyal and still qualify for exemption. It may desire and hope for a Soviet type dictatorship. It may be committed to violence toward overthrow of our democracy in favor of dictatorship. It may believe and teach that society would fare better under a monolithic state than under democratic government. None of these would disqualify for tax exemption. The condition for exemption imposed by Article XX, Section 19, as interpreted by the majority of the California Supreme Court, is that the church do not *advocate* the overthrow of government or *advocate* war-time support of a foreign government against the United States. The test imposed is not pledge of loyalty; not liege support but disavowal of countervailing action; not allegiance and the bended knee but forbearance and sheathing of the upraised sword. The two are utterly different. Judge Learned Hand, in *United States v. Rossler,* 144 Fed. 2d 463, discusses the difference between attitudes of mind and heart and physical acts.

Entirely consistent with obtaining the exemption, churches may continually debate democracy versus dictatorship and their relative merits. They may entertain and discuss any beliefs they wish. But they cannot obtain the church exemption when they take active steps to degrade and tear down the cultural and ethical quality of our people by encouraging them to take up arms and engage in violence against government when the time is ripe. The legitimate and proper purpose of the church exemption would be defeated by granting such organizations the church exemption.

VI.

Federal Legislation Has Not So Occupied the Field of Advocacy of Violent Overthrow of Government That the States Now Lack the Power to Deny Tax Exemption to Those Who So Advocate.

Petitioners argue (Pet'r Consol. Op. Br. pp. 41-43) that the federal government has so occupied the field of sedition that the States no longer have the power to enact any manner of legislation on the subject. In this contention petitioners rely primarily on *Pennsylvania v. Nelson,* 350 U.S. 497, where this Court held invalid a Pennsylvania Court conviction, under the Pennsylvania Sedition Act, of sedition against the United States, on the ground that the federal government had fully occupied that field. The pith of petitioners' argument is that

"If the state cannot punish the disapproved advocacy by the exercise of the criminal power, it cannot punish such advocacy by the exercise of the taxing power . . ." (Pet'r Consol. Op. Br., pp. 42-43).

No such principle can be gleaned from the *Nelson* case. This Court was careful to preclude that very implication, saying:

"It should be said at the outset that the decision in this case does not . . . limit the right of the State to protect itself at any time against sabotage or attempted violence of all kinds. Nor does it prevent the State from prosecuting where the *same act* constitutes both a federal offense and a state offense under the police power, as was done in *Fox v. Ohio,* 46 U.S. 410, and *Gilbert v. Minnesota,* 254 U.S. 324, . . . In neither of those cases did the state statutes impinge on federal jurisdiction. In the *Fox* case, the federal offense was counterfeiting. The state offense was defrauding the person to whom the spurious money was passed. In the *Gilbert* case this Court, in upholding the enforcement of a state statute, proscribing conduct which would 'interfere with or discourage the enlistment of men in the military forces of the United States or of the State of Minnesota,' treated it not as an act relating to 'the raising of armies for the national defense, nor to rules or regulations for the government of those under arms [a constitutionally exclusive power]. It [was] simply a local police measure. . . .' " (Emphasis added.) 350 U.S., at 500-501.

In that case this Court said expressly that the jurisdiction of the states was superseded only as regards parallel legislation. Article XX, Section 19 and Section 32 do not broadly or universally proscribe advocacy of violent overthrow of government, only in connection with tax exemption. Advocates of this activity, whether churches or others, are not punished or penalized, nor are they taxed more than others who also do not qualify for the church exemption because for one reason or another they also do not serve the ends sought to be effected by the church exemption.

Further, petitioners' argument in this respect is inconsistent with this Court's decisions in *Adler v. Board of Education,* 342 U.S. 485 (which upheld the power of the States to deny employment as a teacher to those who advocate forceful and violent overthrow of government) and in *Garner v. Board of Education,* 341 U.S. 716 (which upheld the power of States and their subdivisions to deny public employment to advocates of violent overthrow of government). The *Nelson* case did not overrule *Adler* and *Garner;* instead both cases were cited with approval within one week of the *Nelson* decision in *Slochower v. Board of Education of N. Y.,* 350 U.S. 551.

CONCLUSION

We respectfully submit that the petitions should be dismissed and the decisions by the California Supreme Court be affirmed.

Respectfully submitted,

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